

SHB 1349 - H AMD 215

By Representative Pollet

ADOPTED 3/9/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 42.56.070 and 2005 c 274 s 284 are each amended to
4 read as follows:

5 (1) Each agency, in accordance with published rules, shall make
6 available for public inspection and copying all public records,
7 unless the record falls within the specific exemptions of subsection
8 (~~((6))~~) (9) of this section, this chapter, or other statute which
9 exempts or prohibits disclosure of specific information or records.
10 To the extent required to prevent an unreasonable invasion of
11 personal privacy interests protected by this chapter, an agency shall
12 delete identifying details in a manner consistent with this chapter
13 when it makes available or publishes any public record; however, in
14 each case, the justification for the deletion shall be explained
15 fully in writing.

16 (2) For informational purposes, each agency shall publish and
17 maintain a current list containing every law, other than those listed
18 in this chapter, that the agency believes exempts or prohibits
19 disclosure of specific information or records of the agency. An
20 agency's failure to list an exemption shall not affect the efficacy
21 of any exemption.

22 (3) Each local agency shall maintain and make available for
23 public inspection and copying a current index providing identifying
24 information as to the following records issued, adopted, or
25 promulgated after January 1, 1973:

26 (a) Final opinions, including concurring and dissenting opinions,
27 as well as orders, made in the adjudication of cases;

28 (b) Those statements of policy and interpretations of policy,
29 statute, and the Constitution which have been adopted by the agency;

30 (c) Administrative staff manuals and instructions to staff that
31 affect a member of the public;

32 (d) Planning policies and goals, and interim and final planning
33 decisions;

1 (e) Factual staff reports and studies, factual consultant's
2 reports and studies, scientific reports and studies, and any other
3 factual information derived from tests, studies, reports, or surveys,
4 whether conducted by public employees or others; and

5 (f) Correspondence, and materials referred to therein, by and
6 with the agency relating to any regulatory, supervisory, or
7 enforcement responsibilities of the agency, whereby the agency
8 determines, or opines upon, or is asked to determine or opine upon,
9 the rights of the state, the public, a subdivision of state
10 government, or of any private party.

11 (4) A local agency need not maintain such an index, if to do so
12 would be unduly burdensome, but it shall in that event:

13 (a) Issue and publish a formal order specifying the reasons why
14 and the extent to which compliance would unduly burden or interfere
15 with agency operations; and

16 (b) Make available for public inspection and copying all indexes
17 maintained for agency use.

18 (5) Each state agency shall, by rule, establish and implement a
19 system of indexing for the identification and location of the
20 following records:

21 (a) All records issued before July 1, 1990, for which the agency
22 has maintained an index;

23 (b) Final orders entered after June 30, 1990, that are issued in
24 adjudicative proceedings as defined in RCW 34.05.010 and that contain
25 an analysis or decision of substantial importance to the agency in
26 carrying out its duties;

27 (c) Declaratory orders entered after June 30, 1990, that are
28 issued pursuant to RCW 34.05.240 and that contain an analysis or
29 decision of substantial importance to the agency in carrying out its
30 duties;

31 (d) Interpretive statements as defined in RCW 34.05.010 that were
32 entered after June 30, 1990; and

33 (e) Policy statements as defined in RCW 34.05.010 that were
34 entered after June 30, 1990.

35 Rules establishing systems of indexing shall include, but not be
36 limited to, requirements for the form and content of the index, its
37 location and availability to the public, and the schedule for
38 revising or updating the index. State agencies that have maintained
39 indexes for records issued before July 1, 1990, shall continue to
40 make such indexes available for public inspection and copying.

1 Information in such indexes may be incorporated into indexes prepared
2 pursuant to this subsection. State agencies may satisfy the
3 requirements of this subsection by making available to the public
4 indexes prepared by other parties but actually used by the agency in
5 its operations. State agencies shall make indexes available for
6 public inspection and copying. State agencies may charge a fee to
7 cover the actual costs of providing individual mailed copies of
8 indexes.

9 (6) A public record may be relied on, used, or cited as precedent
10 by an agency against a party other than an agency and it may be
11 invoked by the agency for any other purpose only if:

- 12 (a) It has been indexed in an index available to the public; or
13 (b) Parties affected have timely notice (actual or constructive)
14 of the terms thereof.

15 (7) Each agency shall establish, maintain, and make available for
16 public inspection and copying a statement of the actual per page cost
17 or other costs, if any, that it charges for providing photocopies of
18 public records and a statement of the factors and manner used to
19 determine the actual per page cost or other costs, if any.

20 (a) In determining the actual per page cost for providing
21 photocopies of public records, an agency may include all costs
22 directly incident to copying such public records including the actual
23 cost of the paper and the per page cost for use of agency copying
24 equipment. In determining other actual costs for providing
25 photocopies of public records, an agency may include all costs
26 directly incident to shipping such public records, including the cost
27 of postage or delivery charges and the cost of any container or
28 envelope used.

29 (b) In determining the actual per page cost or other costs for
30 providing copies of public records, an agency may not include staff
31 salaries, benefits, or other general administrative or overhead
32 charges, unless those costs are directly related to the actual cost
33 of copying the public records. Staff time to copy and mail the
34 requested public records may be included in an agency's costs.

35 (8) An agency need not calculate the actual per page cost or
36 other costs it charges for providing photocopies of public records if
37 to do so would be unduly burdensome, but in that event: The agency
38 may not charge in excess of fifteen cents per page for photocopies of
39 public records or for the use of agency equipment to photocopy public
40 records and the actual postage or delivery charge and the cost of any

1 container or envelope used to mail the public records to the
2 requestor.

3 (9)(a) This chapter shall not be construed as giving authority to
4 any agency, the office of the secretary of the senate, or the office
5 of the chief clerk of the house of representatives to give, sell or
6 provide access to lists of individuals requested for commercial
7 purposes, and agencies, the office of the secretary of the senate,
8 and the office of the chief clerk of the house of representatives
9 shall not do so unless specifically authorized or directed by law(~~(-~~
10 ~~PROVIDED, HOWEVER, That)~~). However, the lists of applicants for
11 professional licenses and of professional licensees shall be made
12 available to those professional associations or educational
13 organizations recognized by their professional licensing or
14 examination board, upon payment of a reasonable charge therefor(~~(-~~
15 ~~PROVIDED FURTHER, That)~~), and such recognition may be refused only
16 for a good cause pursuant to a hearing under the provisions of
17 chapter 34.05 RCW, the administrative procedure act.

18 (b) Before obtaining records containing the names or nonexempt
19 contact information of employees or volunteers from any agency, the
20 requester must swear under oath that he or she will not use such
21 information to obtain information exempted under RCW 42.56.250 for a
22 commercial purpose or to harass, stalk, threaten, or intimidate any
23 person.

24 (c) A person is subject to civil liability if he or she:

25 (i) Requests, pursuant to this chapter, the names or nonexempt
26 contact information of agency employees or volunteers in order to
27 obtain information exempted under RCW 42.56.250 for a commercial
28 purpose or to harass, stalk, threaten, or intimidate any person; or

29 (ii) Uses the names or nonexempt contact information of agency
30 employees or volunteers, with knowledge that such information was
31 obtained through a request made pursuant to this chapter, in order to
32 obtain information exempted under RCW 42.56.250 for a commercial
33 purpose or to harass, stalk, threaten, or intimidate any person.

34 (d) A person who is liable under (c) of this subsection may be
35 sued in superior court by any aggrieved party, or in the name of the
36 state by the attorney general or the prosecuting authorities of
37 political subdivisions of this state. A plaintiff may recover five
38 hundred dollars for each item of information used in violation of (c)
39 of this subsection, plus costs and reasonable attorneys' fees. The
40 court may order any other appropriate civil remedy.

1 (e) For purposes of using the names or nonexempt contact
2 information of agency employees or volunteers in order to obtain
3 information exempted under RCW 42.56.250, a commercial purpose
4 includes:

5 (i) Soliciting, marketing, advertising, or self-promoting;
6 (ii) Inducing any person to economically support any entity; or
7 (iii) Inducing any person to cease or refrain from economically
8 supporting any entity.

9 (f) It is not a commercial purpose to obtain names or contact
10 information for purposes of soliciting support for or opposition to
11 any political party, candidate, or ballot measure, as defined in RCW
12 42.17A.005.

13 **Sec. 2.** RCW 42.56.250 and 2014 c 106 s 1 are each amended to
14 read as follows:

15 The following employment and licensing information is exempt from
16 public inspection and copying under this chapter:

17 (1) Test questions, scoring keys, and other examination data used
18 to administer a license, employment, or academic examination;

19 (2) All applications for public employment, including the names
20 of applicants, resumes, and other related materials submitted with
21 respect to an applicant;

22 (3) The following information held by any public agency in
23 personnel records, public employment related records, volunteer
24 rosters, or included in any mailing list of employees or volunteers
25 of any public agency: Residential addresses, residential telephone
26 numbers, personal wireless telephone numbers, personal electronic
27 mail addresses, social security numbers, driver's license numbers,
28 identicard numbers, and emergency contact information of employees or
29 volunteers of a public agency, and the names, dates of birth,
30 residential addresses, residential telephone numbers, personal
31 wireless telephone numbers, personal electronic mail addresses,
32 social security numbers, and emergency contact information of
33 dependents of employees or volunteers of a public agency. For
34 purposes of this subsection, "employees" includes independent
35 provider home care workers as defined in RCW 74.39A.240, and in-home
36 child care providers exempt from licensing requirements, as provided
37 in chapter 43.215 RCW;

38 (4) Information that identifies a person who, while an agency
39 employee: (a) Seeks advice, under an informal process established by

1 the employing agency, in order to ascertain his or her rights in
2 connection with a possible unfair practice under chapter 49.60 RCW
3 against the person; and (b) requests his or her identity or any
4 identifying information not be disclosed;

5 (5) Investigative records compiled by an employing agency
6 conducting an active and ongoing investigation of a possible unfair
7 practice under chapter 49.60 RCW or of a possible violation of other
8 federal, state, or local laws prohibiting discrimination in
9 employment;

10 (6) Criminal history records checks for board staff finalist
11 candidates conducted pursuant to RCW 43.33A.025;

12 (7) Except as provided in RCW 47.64.220, salary and benefit
13 information for maritime employees collected from private employers
14 under RCW 47.64.220(1) and described in RCW 47.64.220(2); and

15 (8) Photographs and month and year of birth in the personnel
16 files of employees and workers of criminal justice agencies as
17 defined in RCW 10.97.030. The news media, as defined in RCW
18 5.68.010(5), shall have access to the photographs and full date of
19 birth. For the purposes of this subsection, news media does not
20 include any person or organization of persons in the custody of a
21 criminal justice agency as defined in RCW 10.97.030."

22 Correct the title.

EFFECT: (1) Requires a requester for public records containing
the names or nonexempt contact information of employees or volunteers
to swear that requested information will not be used to obtain
exempted information for commercial purposes or to harass, stalk,
threaten, or intimidate any person;

(2) Provides civil liability for any person who obtains or uses
employees' or volunteers' names and information from a records
request to obtain exempted information for a commercial purpose or to
harass, stalk, threaten, or intimidate;

(3) Allows a civil suit to be brought by any aggrieved party, the
attorney general, or local prosecutor for a violation of the act;

(4) Provides a civil remedy to include a \$500 penalty for each
item of information obtained in violation of the act;

(5) Provides that commercial purpose means soliciting, marketing,
advertising, self-promoting, or inducing someone to economically
support, or cease supporting, any entity;

(6) Exempts political solicitation from the meaning of commercial
purpose; and

(7) Exempts certain information related to in-home child care providers who are not licensed under chapter 43.215 RCW, by including such a class within the definition of employees.

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